

The Honorable Marsha J. Pechman

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

BARBARA KNAPKE, individually and on  
behalf of all other similarly situated,

Plaintiff,

v.

PEOPLECONNECT, INC., a Delaware  
Corporation,

Defendant.

Case No. 2:21-cv-00262-MJP

DECLARATION OF TARA MCGUANE IN  
SUPPORT OF DEFENDANT'S MOTION TO  
DISMISS

NOTE ON MOTION CALENDAR: MAY 28,  
2021

I, Tara McGuane, hereby declare:

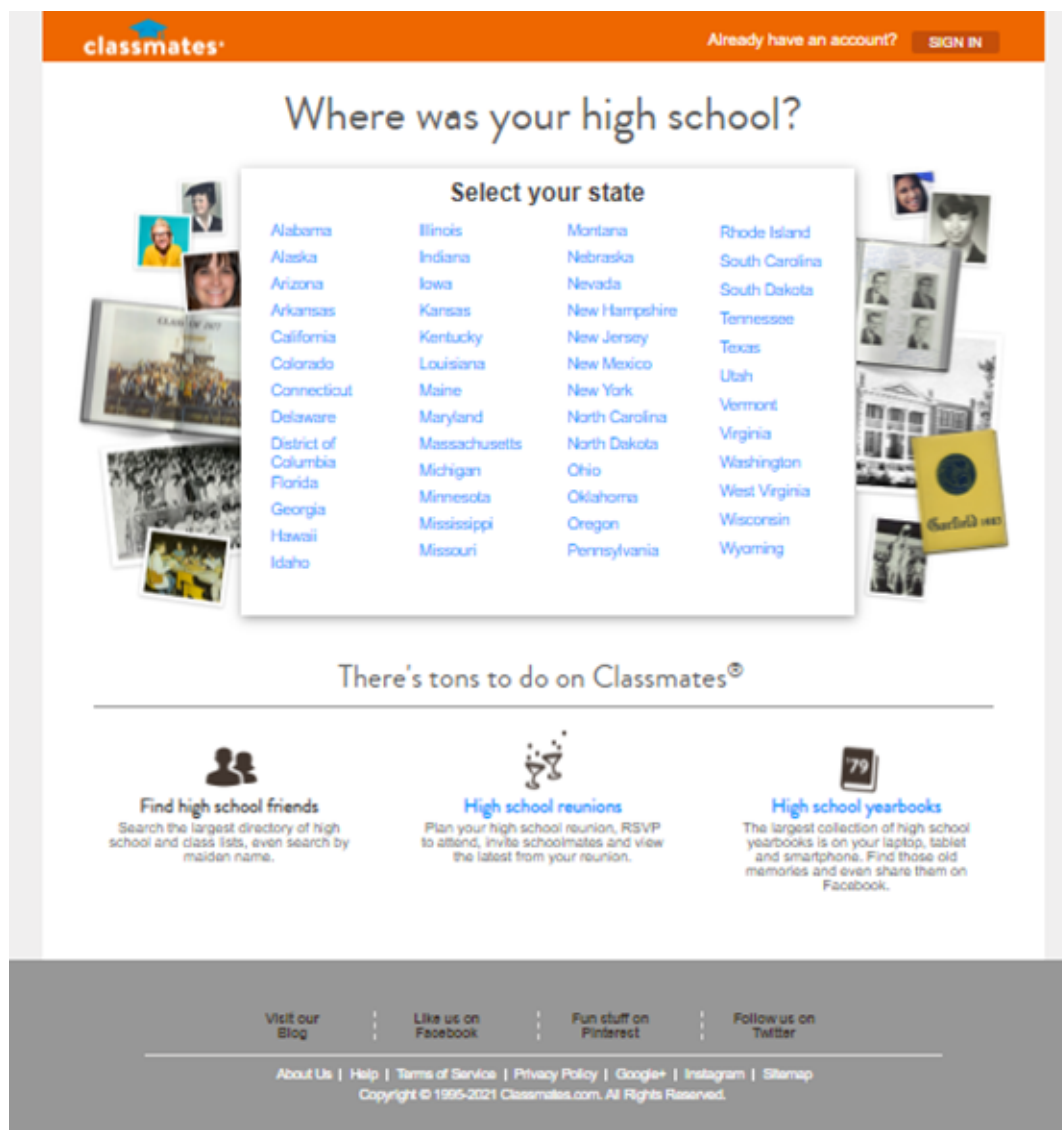
1. I am the Associate Director of Compliance and IP at PeopleConnect, Inc. ("PeopleConnect"). I have been in that role since November 2020. In that role, I am responsible for drafting and enforcing the Terms of Service ("TOS") and am familiar with how the TOS are displayed on Classmates.com. I previously held the position of Senior IP & Marketing Compliance Manager. I have worked at PeopleConnect since 2002.

2. PeopleConnect owns and operates Classmates.com.

3. Classmates.com provides the general public access to an online database of alumni and yearbook information.

4. Classmates.com is governed by the TOS published on Classmates.com. A true and correct copy of the TOS is attached hereto as Exhibit 1.

5. The TOS is accessible to each user of Classmates.com via a hyperlink in the website's persistent footer and on the non-registered user homepage as shown in the image below.



6. When a user of Classmates.com registers for an account, he or she sees the following screen, which includes the following: “By clicking Submit, you agree to the Terms of Service and Privacy Policy.” The phrase “Terms of Service” is hyperlinked to a copy of the current TOS.

7. The TOS states:

By accessing and using the Websites and Services you are agreeing to the following Terms of Service. We encourage you to review these Terms of Service, along with the Privacy Policy, which is incorporated herein by reference, as they form a binding agreement between us and you. If you object to anything in the Terms of Service or the Privacy Policy, do not use the Websites and Services.

**USE OF THE WEBSITES AND/OR SERVICES REQUIRE YOU TO ARBITRATE ALL DISPUTES ON AN INDIVIDUAL BASIS, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE (SEE SECTION 13 BELOW).**

(Ex. 1, Acceptance of Terms.)

8. The TOS includes the following arbitration provision:

**PLEASE READ THIS SECTION CAREFULLY - IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR**

**RIGHT TO FILE A LAWSUIT IN COURT. YOU AND THE PEOPLECONNECT ENTITIES EACH AGREE THAT ANY AND ALL DISPUTES THAT HAVE ARISEN OR MAY ARISE BETWEEN YOU AND THE PEOPLECONNECT ENTITIES SHALL BE RESOLVED EXCLUSIVELY THROUGH FINAL AND BINDING ARBITRATION, RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT, IF YOUR CLAIMS QUALIFY.**

You and PeopleConnect and/or its parent companies, subsidiaries, affiliates, and/or any and all of their respective directors, officers, employees and contractors (each a "PeopleConnect Entity" and, together, the "PeopleConnect Entities") agree to arbitrate any and all disputes and claims between them ("Dispute(s)"), except as otherwise specifically provided below. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award.

This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to: (1) Disputes related in any way to the Services, billing, privacy, advertising or our communications with you; (2) Disputes arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; (3) Disputes that arose before your agreement to these Terms of Services or any prior agreement; (4) Disputes that are currently the subject of purported class action litigation in which you are not a member of a certified class; and (5) Disputes that may arise after the termination of your use of the Services.

*(Id. at Section 13.)*

9. Any arbitrations are governed by the following rules:

Rules. The arbitration will be governed by the Consumer Arbitration Rules of the American Arbitration Association ("AAA"), if applicable, as modified by this section. The AAA's rules and a form for initiating the proceeding are available at [www.adr.org](http://www.adr.org) or by calling the AAA at 800.778.7879. The arbitration will be presided over by a single arbitrator selected in accordance with the AAA rules.

*(Id. at Section 13(B)(i).)*

10. The TOS also includes the following class action waiver:

**ANY PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION. NEITHER PARTY SHALL BE A MEMBER IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION OR PROCEEDING, AND THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL DISPUTE OR CLAIM. UNLESS THE PARTIES AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE**

**MORE THAN ONE PERSON'S DISPUTES, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. THE PEOPLECONNECT ENTITIES DO NOT CONSENT TO CLASS ARBITRATION. THE PARTIES HEREBY WAIVE ANY RIGHT TO A JURY TRIAL.**

*(Id. at 13(c).)*

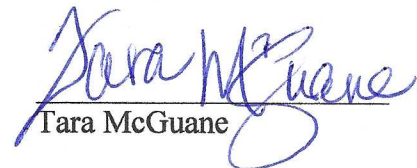
11. I have reviewed and am familiar with PeopleConnect's business records related to Mr. Christopher Reilly's use of Classmates.com. PeopleConnect maintains those records in the ordinary course of its business.

12. On January 7, 2021, Mr. Reilly created a free Classmates.com account. His account was associated with the email chrisreillyfl@gmail.com. On January 29, 2021, he purchased a three-month subscription.

13. Mr. Reilly could not have created a free account without first agreeing to the Classmates.com TOS. Mr. Reilly could not have purchased a three-month subscription without again agreeing to the Classmates.com TOS.

14. I have reviewed the complaint filed by Plaintiff in this matter. The screenshots of the Classmates.com webpages reflected in Paragraphs 6 and images 1, 3, 4, and 5 included in Paragraph 8 of the complaint could only have been accessed after the user agreed to the Classmates.com TOS.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that I executed this declaration on April 30, 2021 in Seattle, Washington.

  
Tara McGuane

# **EXHIBIT 1**





# Terms of Service

## Terms of Service

*Update*

*Effective:*

*June 29, 2017 for new users*

*September 1, 2017 for existing users*

Our Terms of Service have been updated, [click here](#) for a summary of changes. To view the previous version of the Terms of Service, [click here](#).

### INTRODUCTION

Welcome to PeopleConnect and thank you for using our services. Our web sites include PeopleConnect.us, Classmates.com, Intelius.com and USSearch.com, as well as other websites owned and operated by us (collectively, the “Websites”), along with various applications and tools that we operate on third-party websites and devices, such as Facebook, smartphones or tablets (such services offered through the Websites, applications or tools collectively, the “Services”).

### ACCEPTANCE OF TERMS

By accessing and using the Websites and Services you are agreeing to the following Terms of Service. We encourage you to review these Terms of Service, along with the [Privacy Policy](#), which is incorporated herein by reference, as they form a binding agreement between us and you. If you object to anything in the Terms of Service or the [Privacy Policy](#), do not use the Websites and Services.

**USE OF THE WEBSITES AND/OR SERVICES REQUIRE YOU TO ARBITRATE ALL DISPUTES ON AN INDIVIDUAL BASIS, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE (SEE SECTION 13 BELOW).**

We may change these Terms of Service, in whole or in part, at any time. Posting of the updated Terms of Service on the Websites will constitute notice to you of any such changes, although we may choose other types of notice for certain changes. Changes will become effective upon notice. Your continued use of the Websites or Services following notice shall constitute your acceptance of all changes, and each use of the Websites or Services constitutes your reaffirmation of your acceptance of these Terms of Service. If you do not agree to the changes to these Terms of Service, your sole and exclusive remedy will be to terminate your account and cease use of the Websites or Services.

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## 1. BECOMING A MEMBER OF AND REGISTERING FOR THE SERVICES

**A. Accessing the Services and Becoming a Member.** THE SERVICES ARE INTENDED SOLELY FOR ACCESS AND USE BY INDIVIDUALS 18 YEARS OF AGE AND OLDER. BY ACCESSING AND USING THE SERVICES, YOU ARE CERTIFYING THAT YOU ARE AT LEAST 18 YEARS OLD. Our Services are primarily intended to be utilized by residents of the United States and we may limit or restrict access to the Websites and Services based on your geographic location or ISP. While there are parts of the Services where access requires the payment of a fee ("Paid Services"), there is no cost to register to become a member of the Services. The specific Services available to you will vary depending upon (1) whether you register as a member, (2) the community affiliation(s) to which you have self-identified (if you are a Classmates member), and (3) whether or not you choose to purchase Paid Services.

**B. Your Information.** We will collect, store, compile and utilize information about you, your computer, smartphone or other device, and your use of the Services, including information that you provide in response to questionnaires, surveys and registration forms. Please review our [Privacy Policy](#) for more information about our privacy policies and practices. For your part, you agree that all information that you provide to us or



post on the Services is complete, accurate and up to date. If any of your information changes, you agree to immediately update it. If you fail to update your information or if all or part of your information is (or appears to be) untrue, inaccurate, or incomplete, we may suspend or terminate your account and refuse any and all current or future use of the Services, without refund to you of any fees paid.

Without limiting any of the foregoing, you are responsible for ensuring that the email address you provide to us is valid and that the services, software or systems you use to access your email ("Email Systems") do not block or filter Communications (as defined below). We ask that you use your personal email address when registering. If you provide us with a non-personal email address or use an Email System that interferes with the delivery of Communications, we may not be able to provide you with certain Services. Your failure to provide us with an email address to which we can consistently deliver email may result in the termination of your account.

**C. Your Password.** During the registration process we may provide you with a unique registration number. We will also either ask you to create a password or assign you a random password, which you can change at any time by logging onto the "Account" portion of the Services. Alternatively, you may have the option of using your Facebook login credentials or similar login processes or co-registration forms from or on other third party websites to create an account and authenticate your access to the website. Because any activities that occur under your account are your responsibility, it is important for you to keep your password secure. Notify us immediately if you believe that someone has used your account without your authorization.

**D. Communications.** From time to time we will send you communications, in keeping with our [Privacy Policy](#) and as otherwise permitted in these Terms of Service ("Communications"). Please note that any number of issues may interfere with your receipt of such Communications, including some types of Email Systems that may use filtering or blocking techniques that are intended to block email. We are not responsible for the actual delivery or your actual receipt of these Communications.

## 2. PAID SERVICES

Access to some of the Services requires the purchase of Paid Services. If you elect to purchase Paid Services, you agree to our storage of your payment information and understand that your Paid Services are personal to you, such that you may not transfer or make available your account name and password to others. Any distribution or sharing by you of your account name and password may result in cancellation of your Paid Services without refund and/or additional charges based on unauthorized use. We reserve the right, from time to time, to change the Paid Services, with or without prior notice to you.

**A. Payment.** Prices for all Paid Services are in U.S. dollars and exclude any and all applicable taxes, unless expressly stated otherwise. To the extent permissible under law, you are responsible for any applicable taxes, whether or not they are listed on your receipt or statement. All applicable taxes are calculated based on the billing

information you provide us at the time of purchase. If you purchase Paid Services, you agree to pay, using a valid credit or debit card or other form of payment that we may accept from time to time ("Payment Method"), the applicable fees and taxes (if any) set forth in the offer that you accepted. We reserve the right, upon prior notice to you, to change the amount of any fees and to institute new fees, effective at the end of your current subscription period. All authorized charges will be billed to your designated Payment Method on the terms described in the specific offer. If payment cannot be charged to your Payment Method or your payment is returned to us for any reason, we reserve the right to either suspend or terminate your access to the unpaid-for Paid Services. It is your responsibility to ensure that sufficient funds are available to cover the charges for the Paid Services, and we have no liability for any overdraft or other fees that you may incur as a result of our processing of your payment.

**B. Automatic Renewal Program.** Upon your acceptance of an offer for the purchase of any subscription-based Paid Services, you will be enrolled in our automatic renewal program to help ensure that there is no interruption in your access to such Paid Services. Under this program, you authorize us to automatically renew your subscription at the end of the term of the subscription you purchased, and each subsequent term, for the same term length of the subscription you initially purchased (unless otherwise stated in the offer you accepted). Unless you change your renewal status as described below, at the time of each such renewal you authorize us to charge your designated Payment Method at the then-current, non-promotional price (unless otherwise stated in the offer you accepted) for the renewal of your subscription. If you no longer want to be enrolled in our automatic renewal program, you can change your renewal status at any time by completing the following steps:

- Classmates.com - logging onto the [Account](#) portion of the Classmates.com Website, clicking on "Account & Billing" and changing your renewal option from "automatic" to "manual."
- Intelius.com – logging onto the [My Account](#) portion of the Intelius.com Website and click on "cancel my membership."
- USSearch.com - logging onto the [Your Account](#) portion of the USSearch.com Website and click on "cancel service."

Please note that completing these steps will only stop future automatic renewals of your current subscription and will not impact any automatic renewals that occurred prior to the date that you completed these steps.

**C. Current Information.** You must provide us with current, complete and accurate information for your Payment Method. You must promptly update all information to keep your Payment Method current, complete and accurate (such as a change in billing address, card number or expiration date), and you must promptly notify us if your Payment Method is cancelled (including if you lose your card or it is stolen), or if you become aware of a potential breach of security (such as an unauthorized disclosure or use of your name or password). Changes to such information can be made by accessing the Account portion of the applicable Website or by contacting the applicable Customer Support. If you fail to provide us with any of the foregoing

information, you agree that you are responsible for fees accrued under your Payment Method. In addition, you authorize us to obtain updated or replacement expiration dates and card numbers for your credit or debit card as allowed or provided by your credit or debit card issuer.

**D. No Refund Policy.** All fees relating to Paid Services, including the initial fees and any subsequent automatic renewal fees (as described above), are non-refundable. If you initiate a chargeback or otherwise reverse a payment made with your Payment Method, we may in our discretion cancel your Paid Services immediately. If we successfully dispute the reversal, and the reversed funds are returned to us, you are not entitled to a refund or to have your Paid Services reinstated.

### 3. SPECIAL TERMS THAT APPLY TO CLASSMATES USERS

**A. Classmates Member Conduct - Community Guidelines.** The Classmates Services contain areas that enable members to communicate and share information, including without limitation sending email through the Services, providing information on your profile pages, and posting information on message boards, forums and other areas where you may interact with other members (collectively, the "Communication Tools"). When you use the Communication Tools, you may have the opportunity to disclose, post, upload, or otherwise publicly display, or to share directly with other members, information and other content, including without limitation biographical information, photographs, stories and comments (collectively, "Content"). While we may provide you with these Communications Tools, we also wish to remind you that you should choose carefully what information you post via the Services and share with other members.

You are required to use the Communication Tools responsibly, just as you would act responsibly when communicating or interacting with others in your offline communities. As a result, we expect and require that you take full responsibility for the Content that you post on or send through the Classmates Services. We have established some "Community Standards" that outline your responsibilities when using the Communication Tools.

The following Classmates Community Standards apply to and govern your use of the Communication Tools:

- Do not create a false identity, impersonate any person or entity, or otherwise misrepresent yourself, your age or your affiliation with any person or entity
- Do not register more than one personal membership or register on behalf of another person
- Do not post telephone numbers, street addresses or email addresses in Content that is publicly accessible on the Services, with the exception of the location of a reunion or other appropriate event
- Do not engage in behavior meant to threaten, harass, intimidate or bully others or which constitutes predatory or stalking conduct

- Do not use the Services as a venue to air personal disputes with other individuals
- Do not provide any Content that is illegal, obscene, pornographic or sexually explicit, depicts graphic or gratuitous violence or illegal drug paraphernalia, or is derogatory, demeaning, malicious, defamatory, abusive, hateful, racially or ethnically offensive, or otherwise determined to be objectionable
- Do not provide any Content that encourages a criminal offense or infringes, misappropriates, or otherwise violates the intellectual property rights or other rights of any third party
- Do not post web addresses that link to pornographic or inappropriate content, websites that promote your or someone else's commercial gain, websites that provide services similar to those offered by us, or any other content that violates these Community Standards
- Do not provide or post private communications from us or any other party without such party's permission
- Do not copy or re-post content provided by others or otherwise use information or content you obtained on the Services in any manner not authorized by us or the contributor
- Do not participate in any unauthorized or unsolicited promotions, advertising, junk mail, spam, or any other form of solicitation, or otherwise use the Services for any commercial purpose
- Do not violate any applicable local, state, national and international law or regulation
- Do not interfere with, interrupt, destroy or limit the functionality of the Services or any computer software or hardware or telecommunications equipment
- Do not try to gain unauthorized access to the Services, other members' accounts, or computers connected to the Services
- Do not collect users' content or information, or otherwise access the Services, using automated means, such as scripts, bots, robots, spiders or scrapers
- Do not do anything that could damage, disable, overburden or impair the proper working or appearance of the Services, such as a denial of service attack or interference with page rendering or other functionality

**B. . Classmates Member Conduct - Monitoring and Enforcement.** We do not actively monitor the Communication Tools or the Content that is provided through such Communication Tools, nor are we obligated to do so. Accordingly, we do not guarantee the accuracy, integrity or quality of the Content. Because individuals sometimes choose not to comply with our policies and practices, you may be exposed to Content that you find offensive or otherwise objectionable. We encourage you to use the tools available on the Classmates Services to report any Content that you think may violate the Community Standards. We may investigate the complaints that come to our attention, but are not obligated to do so. If we choose to investigate, we will take any action that we believe is appropriate in our sole discretion, such as issuing warnings, removing the Content, or suspending or terminating accounts. However, because situations and interpretations vary, we also reserve the right not to take any action. In such cases, we may not remove Content that you believe is

objectionable. Please remember that you can always choose to refrain from using any part of the Services that exposes you to something that you are uncomfortable with. Under no circumstances will we be liable in any way for any Content, including any errors or omissions in any Content or any loss or damage of any kind incurred as a result of the use of, access to or denial of access to any Content. In addition, we are not responsible for the conduct, whether online or offline, of any user of the Website or member of these Services.

**C. Submitting or Posting Content on Classmates.** We do not claim ownership of any of the Content you submit or post through the Classmates Services or allow us to obtain from third parties to include in the Services. Instead, you hereby grant us a royalty-free, worldwide, transferable, sub-licensable, non-exclusive license to use, reproduce, publish, store, distribute, display, communicate, perform, transmit, create derivative works based upon, and promote such Content (in whole or in part) in any medium now known or hereafter devised. Please remember that you are ultimately responsible for all of your Content, and you therefore warrant and represent that you are entitled to grant the foregoing license and that the Content does not violate any third party rights. No compensation will be paid for the use of your Content.

## **4. SPECIAL TERMS THAT APPLY TO INTELIOUS & US SEARCH USERS**

### **A. Intelious and US Search Member Conduct.**

The following member conduct guidelines apply to and govern your use of the Intelious or US Search Services:

- Do not create a false identity, impersonate any person or entity, or otherwise misrepresent yourself, your age or your affiliation with any person or entity
- Do not register more than one personal account/membership or register on behalf of another person
- Do not engage in behavior meant to threaten, harass, intimidate or bully others or which constitutes predatory or stalking conduct
- Do not use the Services to seek information about or harm minors in any way
- Do not provide or post private communications from us without permission
- Do not violate any applicable local, state, national and international law or regulation
- Do not interfere with, interrupt, destroy or limit the functionality of the Services or any computer software or hardware or telecommunications equipment
- Do not try to gain unauthorized access to the Services, other members' accounts, or computers connected to the Services
- Do not resell any of the products or services that you purchase from us
- Do not collect users' content or information, or otherwise access the Services, using automated means, such as scripts, bots, robots, spiders or scrapers
- Do not do anything that could damage, disable, overburden or impair the proper working or appearance of the Services, such as a denial of service attack or interference with page rendering or other functionality

**B. FCRA Restrictions.** We do not provide consumer reports and are not a consumer reporting agency as defined by the [Fair Credit Reporting Act \(15 U.S.C. § 1681b\)](#) (the “FCRA”). The Services cannot be used to determine an individual’s eligibility for credit, insurance, employment, housing or any other purpose prohibited under the FCRA Federal Trade Commission or court interpretations of the FCRA, or similar statutes or determinations.

**C. Additional Restrictions.** When using the Intelius or US Search Services, you should not assume that the data available through these Services include a complete or accurate representation of a person’s criminal or civil judgment background or other information. Certain records, such as criminal, marriage, divorce, etc. may not be available in all states and counties. The data contained in the databases used by the Services have been compiled from publicly available information (such as from court records, phone directories, social networks, business websites, and other public sources) and other proprietary sources for the specific purposes of locating individuals and/or providing general background information about individuals. Our technology can also analyze public data to reveal possible relationships, even when official records aren’t available. WE HAVE NOT VERIFIED THE DATA OR INFORMATION AVAILABLE THROUGH THE SERVICES AND DO NOT WARRANT ITS ACCURACY, LEGITIMACY, TIMELINESS, LEGALITY OR COMPLETENESS. ANY DATA OR INFORMATION PURCHASED FROM US VIA THE SERVICES IS PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR NON-INFRINGEMENT.

**D. Search Products.** All reports purchased via the Intelius and US Search Services are made available in the Account section of the applicable Website for a limited time, as follows:

- Intelius reports are made available for 45 days from date of purchase.
- US Search reports are made available for 1 year from date of purchase.
- Reports obtained via a subscription service are made available for as long as the subscription remains active.

To extend their availability, search reports may be printed or saved digitally using common web browser features.

## 5. OUR PROPERTY RIGHTS

The Services, and all of the content, information and other material that they contain, other than the Content posted by our users, are owned by us, or our third party licensors, and are protected by intellectual property and other rights and laws throughout the world. Subject to your compliance with these Terms of Service, we grant you a limited, revocable, non-exclusive, non-assignable, non-sublicenseable license for the period of your membership to access the Services and view any materials available on the Services for the sole purpose of using the Services. Aside from this limited license, nothing found on the Services maybe copied, reproduced,



republished, distributed, sold, licensed, transferred or modified without our express written permission. In addition, the trademarks, domain names, logos and service marks displayed on the Services are our property or the property of our licensors. This Agreement does not grant you any right or license with respect to any such trademarks, domain names, logos or service marks. If you are aware of Materials on the Services that infringes the copyright or other right of a third party, please contact us through the Copyright Infringement Policy process, which is described in Section 9 below.

## **6. AVAILABILITY OF SERVICES**

We do not provide you with access to the Internet or the equipment necessary to access the Internet or the Services. You are responsible for the fees charged by others to obtain access to the Services and for obtaining the equipment necessary to access the Services. From time to time we may modify, suspend or discontinue any of the Services with or without notice to you. We shall not be liable to you for any such modification, suspension or discontinuance. We may establish certain policies and practices concerning use of the Services, such as the maximum number of email messages, search reports, message board postings or other Content that can be sent through the Services and the number of days that these items will be retained on our systems. We have no responsibility or liability for the deletion or failure to store any messages and other communications or other Content, or search reports maintained or transmitted by or through the Services. We reserve the right to change our practices and policies at any time, in our sole discretion, with or without notice to you.

## **7. LINKING TO OR FROM THE SERVICES**

You cannot link to the Services without our prior written consent. While the Services may have links to the websites of third parties, we have no control over those websites. We are not responsible or liable for any content, advertising, products, services, information or other materials on or available from those websites. We are also not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any content, advertising, products, services, information or other materials on those websites.

## **8. TERMINATION**

You may terminate your account, for any or no reason, at any time by contacting Customer Support through the applicable Website (see Section 2 above for more information about termination of Paid Services). We may terminate your account, for any or no reason, at any time, with or without notice. If we determine, in our sole discretion, that you are not in compliance with the Terms of Service or Privacy Policy, we reserve the right to restrict, suspend or terminate your account. Upon any termination of your account, we may immediately deactivate or delete your account and all related information and/or bar any further access to your account, Content or information. If you have purchased Paid Services from us, any termination by you, or by us with cause, is subject to the no-refund policy described in Section 2(D) above.

## 9. COPYRIGHT INFRINGEMENT POLICY

In compliance with the Digital Millennium Copyright Act ("DMCA"), we have established the procedure outlined below to address alleged copyright infringement on the Services. If you believe that your work has been copied and has been posted on the Services in a way that constitutes copyright infringement, you may provide us with notice of your complaint by providing our Designated Copyright Agent with the following information in writing:

1. The electronic or physical signature of the owner of the copyright or a person authorized to act on the owner's behalf;
2. Identification of the copyrighted work that you claim has been infringed;
3. Identification of the material that is claimed to be infringing, with information about its location reasonably specific to permit us to locate the material;
4. Your name, address, telephone number, and email address;
5. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
6. A statement, made under penalty of perjury, that the above information in your notification is accurate and that you are the copyright owner or are authorized to act on the copyright owner's behalf.

To be effective, your notification must be in writing and include the above information. Our Designated Copyright Agent to receive your notification is:

**Name of Agent:** Intellectual Property Manager

**Address:** 1501 Fourth Avenue, Suite 400, Seattle, WA 98101

**Telephone Number of Designated Agent:** (206) 301-5800

**Facsimile Number of Designated Agent:** (206) 301-5795

**Email Address Designated Agent:** [copyrightnotice@peopleconnect.us](mailto:copyrightnotice@peopleconnect.us)

We, in our sole discretion, reserve the right to refuse additional Content from members who have posted allegedly infringing material, to delete the material, and/or to terminate such members' accounts.

After receiving a notification, we will process and investigate the notification and will take appropriate actions under the DMCA and other applicable intellectual property laws. Upon receipt of a notification that complies or substantially complies with the DMCA (as set forth above), we will act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity, and will act expeditiously to remove or disable access to any reference or link to material or activity that is claimed to be infringing. We will promptly take reasonable steps to notify the member that is the subject of the notification that it has removed or disabled access to such material.

If you are subject to a notification, you may provide us with a counter notification by providing our Designated Copyright Agent the following information in writing:

1. Your physical or electronic signature;
2. Identification of the material that has been removed or to which access has been

- disabled and the location at which the material appeared before it was removed or access to it was disabled;
3. A statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and
  4. Your name, address, and telephone number, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in which your address is located, or if your address is outside of the United States, for any judicial district in which we may be found and that you will accept service of process from the person who provided the initial notification of alleged infringement.

Upon receipt of a proper counter notification under the DMCA (as set forth above), we will promptly provide the person who provided the initial notification with a copy of the counter notification and inform that person that we will reinstate the removed material or cease disabling access to it in ten (10) business days. Additionally, we will replace the removed material and cease disabling access to it not less than ten (10), nor more than fourteen (14) business days following receipt of the counter notice, unless our Designated Copyright Agent first receives notice from the person who submitted the initial notification that such person has filed an action seeking a court order to restrain you from engaging in infringing activity relating to the material on the Services.

## **10. DISCLAIMER OF WARRANTIES**

YOU UNDERSTAND AND AGREE THAT:

THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE DISCLAIM TO THE FULLEST EXTENT PERMISSIBLE BY LAW, AND YOU WAIVE, ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. THE FUNCTIONS, MATERIALS AND CONTENT OF THE SERVICES ARE NOT WARRANTED TO BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, AND WE MAKE NO WARRANTY THAT THE INFORMATION ON THE SERVICES WILL BE ACCURATE, CURRENT OR RELIABLE OR THAT THE QUALITY ANY PRODUCTS, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS. WE DISCLAIM ANY RESPONSIBILITY FOR THE DELETION, FAILURE TO STORE, MISDELIVERY, OR UNTIMELY DELIVERY OF ANY INFORMATION OR MATERIAL. YOU ASSUME THE ENTIRE RISK OF LOSS AND DAMAGE DUE TO YOUR USE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO THE COST OF REPAIRS OR CORRECTIONS TO YOUR HARDWARE OR SOFTWARE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, AND AS A CONSEQUENCE SOME OF THE ABOVE DISCLAIMERS MAY NOT APPLY TO YOU.

## **11. LIMITATIONS OF LIABILITY**

YOUR USE OF THE SERVICES IS ENTIRELY AT YOUR SOLE RISK. WE, OUR PARENTS, SUBSIDIARIES AND OTHER AFFILIATES, AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, AGENTS AND CONTRACTORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOSSES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES), WHICH YOU MAY INCUR IN CONNECTION WITH THE USE OF, OR INABILITY TO USE, THE SERVICES. IN ADDITION, OUR AGGREGATE LIABILITY WILL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100) OR THE AMOUNT YOU HAVE PAID US IN THE TWELVE MONTHS PRIOR TO THE DATE ON WHICH YOUR CLAIM AROSE. THE FOREGOING LIMITATIONS OF LIABILITY ARE PART OF THE BASIS OF THE BARGAIN BETWEEN YOU AND US AND SHALL APPLY TO ALL CLAIMS OF LIABILITY (INCLUDING WITHOUT LIMITATION WARRANTY, TORT, NEGLIGENCE, CONTRACT OR STRICT LIABILITY), EVEN IF WE HAVE BEEN TOLD OF THE POSSIBILITY OF ANY SUCH DAMAGE AND EVEN IF THE AVAILABLE REMEDIES FAIL THEIR ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND AS A CONSEQUENCE SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. IN ANY SUCH CASE, OUR LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

## **12. INDEMNIFICATION**

You shall indemnify and hold harmless, and at our request, defend us, our parents, subsidiaries, and other affiliates, as well as their respective owners, directors, officers, shareholders, employees, licensors, agents and contractors (each, an "Indemnified Party") from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs and expenses (including reasonable attorneys' fees, an allocation for in-house counsel, and other legal costs) arising out of your acts or omissions, including claims resulting from your use of the Services, your submission, posting or transmission of information or Content, or any breach of your obligations set forth in the Terms of Service or Privacy Policy. You shall reimburse each Indemnified Party on demand for any costs, expenses and liabilities incurred by such Indemnified Party to which this indemnity relates.

## **13. MANDATORY ARBITRATION, DISPUTE RESOLUTION AND CLASS ACTION WAIVER**

**PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT. YOU AND THE PEOPLECONNECT ENTITIES EACH AGREE THAT ANY AND ALL DISPUTES THAT HAVE ARISEN OR MAY ARISE BETWEEN YOU AND THE PEOPLECONNECT ENTITIES SHALL BE RESOLVED EXCLUSIVELY THROUGH FINAL AND BINDING ARBITRATION, RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT, IF YOUR**

You and PeopleConnect and/or its parent companies, subsidiaries, affiliates, and/or any and all of their respective directors, officers, employees and contractors (each a "PeopleConnect Entity" and, together, the "PeopleConnect Entities") agree to arbitrate any and all disputes and claims between them ("Dispute(s)"), except as otherwise specifically provided below. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award.

This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to: (1) Disputes related in any way to the Services, billing, privacy, advertising or our communications with you; (2) Disputes arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; (3) Disputes that arose before your agreement to these Terms of Services or any prior agreement; (4) Disputes that are currently the subject of purported class action litigation in which you are not a member of a certified class; and (5) Disputes that may arise after the termination of your use of the Services.

**A. CONTACT US FIRST.** If you intend to pursue or participate in any Dispute in arbitration or small claims court (solely to the extent specifically provided below), you must first notify us of the dispute in writing at least thirty (30) days in advance of initiating arbitration or the small claims court action (if applicable) and attempt to informally negotiate a resolution to the Dispute in good faith. Notice to us should be sent via certified mail to: PeopleConnect, Inc., 1501 4th Avenue, Suite 400, Seattle, WA 98101, Attention: Legal Department. The notice of Dispute must: (a) include your name, address, phone number, and email address(es) used to register with or use the Services; (b) describe the nature and basis of the Dispute; (c) enclose and/or identify all relevant documents and/or information; and (d) set forth the specific relief sought. If the applicable PeopleConnect Entity and you do not reach an agreement to resolve the Dispute within thirty (30) days after the notice is received, you may commence with a formal arbitration proceeding or small claims court action (if applicable).

#### **B. MANDATORY AND BINDING ARBITRATION PROCEDURES**

**YOU UNDERSTAND THAT BY THIS PROVISION, YOU AND THE PEOPLECONNECT ENTITIES ARE FOREGOING THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. THE FEDERAL ARBITRATION ACT GOVERNS THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT TO ARBITRATE.**

- i. **Rules.** The arbitration will be governed by the Consumer Arbitration Rules of the American Arbitration Association ("AAA"), if applicable, as modified by this section. The AAA's rules and a form for initiating the proceeding are available at [www.adr.org](http://www.adr.org) or by calling the AAA at 800.778.7879. The arbitration will be presided over by a single arbitrator selected in accordance with the AAA rules.

- ii. **Location.** Unless otherwise required by the AAA rules, the arbitration shall be held in Seattle, Washington. You and PeopleConnect may elect to have the arbitration conducted based solely on written submissions, subject to the arbitrator's discretion to require an in-person hearing. In cases where an in-person hearing is held, you or the applicable PeopleConnect Entity may attend by telephone, unless the arbitrator requires otherwise.
- iii. **Cost Sharing.** Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this agreement. The applicable PeopleConnect Entity will pay as much of the filing, administration and arbitrator fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive, unless the arbitrator determines that a Dispute was filed for purposes of harassment or is patently frivolous. Reasonable documented attorneys' fees of both parties will be borne by the party that ultimately loses.
- iv. **Arbitrator's Decision.** The arbitrator will decide the substance of the Dispute in accordance with the laws of the state of Washington, regardless of choice of law principles, and will honor all claims of privilege recognized by law. The arbitrator will have the power to award a party any relief or remedy that the party could have received in court in accordance with the law(s) that apply to the Dispute. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

#### **C. CLASS ACTION WAIVER.**

**ANY PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION. NEITHER PARTY SHALL BE A MEMBER IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION OR PROCEEDING, AND THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL DISPUTE OR CLAIM. UNLESS THE PARTIES AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S DISPUTES, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. THE PEOPLECONNECT ENTITIES DO NOT CONSENT TO CLASS ARBITRATION. THE PARTIES HEREBY WAIVE ANY RIGHT TO A JURY TRIAL.**

**D. ARBITRATION OPT-OUT.** You have the right to opt-out and not be bound by this arbitration provision by sending written notice of your decision to opt-out to: PeopleConnect Arbitration Opt-Out, 1501 Fourth Avenue, Suite 400, Seattle, WA 98101. This notice must be sent within thirty (30) days of your first use of the Services or, if you are already a user of the Services upon initial release of this arbitration provision, within thirty (30) days of our email notice to you of that initial release.

The opt-out notice must state that you do not agree to this agreement to arbitrate and must include your name, address, phone number and email address(es) used to register with or use the Services. You must sign the opt-out notice for it be effective. Any opt-out not received within the applicable thirty (30) day period set forth above will



not be valid.

If you opt-out of the agreement to arbitrate, you and the PeopleConnect Entities agree that any Disputes will be resolved by a state or federal court located in King County, Washington, and you consent to the jurisdiction and venue of such court.

**E. SMALL CLAIMS.** You may choose to pursue your Dispute in small claims court (rather than arbitration) where jurisdiction and venue over the applicable PeopleConnect Entity and you are proper, and where your claim does not include a request for any type of equitable relief, and so long as the matter advances on an individual (non-class) basis.

**F. INJUNCTIVE RELIEF.** Notwithstanding anything to the contrary in the foregoing, either party may bring suit in court seeking a temporary or preliminary injunctive relief, which shall then be subject to review by the arbitrator should such party further seek permanent injunctive relief in arbitration.

**G. TIME LIMIT TO PURSUE DISPUTE.** You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or the Terms of Service or [Privacy Policy](#) must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**H. CHANGES TO ARBITRATION CLAUSE.** We may make changes to this arbitration provision during the term of our Services to you. You may reject any material changes by sending us written objection within thirty (30) days of the change to PeopleConnect, Inc., 1501 Fourth Avenue, Suite 400, Seattle, WA 98101, Attention: Legal Department. By rejecting any future material change, you are agreeing to arbitrate in accordance with the unmodified language of the previous version.

## 14. MISCELLANEOUS TERMS

Our relationship is not one of agency or partnership and neither you nor we shall be deemed to be a partner, employee, fiduciary, agent or representative of the other by your use of the Services. You may not assign or transfer your rights to any third party. The terms and conditions in these Terms of Service are severable. In the event that any provision is determined to be unenforceable or invalid, such provision shall still be enforced to the fullest extent permitted by applicable law, and such determination shall not affect the validity and enforceability of any other provisions. If we fail to enforce any provision of these Terms of Service it shall not constitute a waiver of such provision. We may assign our rights and obligations under these Terms of Service. These Terms of Service will inure to the benefit of our successors, assigns and licensees. The failure of either party to insist upon or enforce the strict performance of the other party with respect to any provision of these Terms of Service, or to exercise any right thereunder, will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same will be and will remain in full force and effect. The Terms of Service, the [Privacy Policy](#), and any additional terms incorporated by reference herein will be governed by the laws of the state of Washington and constitute the entire

understanding between us regarding your access to, license and use of the Services and supersede any prior agreements, statements or representations with respect to the same.

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